REPORTABLE

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **FAO NOS. 133/2003, 135/2003 & 136/2003**

Date of Decision: 6th July, 2007

SMT. RAMESH & ANOTHER ..... Appellants .
Through Mr. Gurmit Singh Hans & Mr. Vishal Soni, Advocates.

versus

SH. NAND LAL & OTHERS ..... Respondents.
Through Mr. L.K. Tyagi, Advocate for respondent No. 3.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not ?

3. Whether the judgment should be reported in the Digest ?

SANJIV KHANNA, J:

1. The present appeals arise out of the common award dated 27th May, 2002 passed by Motor Accidents' Claim Tribunal deciding the claim petitions filed by the appellants. The appellants have claimed enhancement of compensation in the present appeals. The appellant no. 1, Smt. Ramesh, in all three appeals is mother of late Ms. Lalita, Ms. Munita and Mr. Dinesh. The second appellant in these appeals is Mr. Paramjeet, brother of

the late Ms. Lalita, Ms. Munita and Mr. Dinesh.

2. The deceased were travelling in a car bearing registration No. DNC-3697, which met with an accident on the night intervening 18th and 19th June, 1997 with truck bearing registration No. HR-38-A-6990. As a result of the said accident, all three of them expired. The said truck was being driven by Mr. Nand Lal, the respondent No. 1 and owned by Mr. Rajinder Pal Singh, the respondent No. 2. The said truck was insured with the Oriental Insurance Company Limited at the time of the accident. Learned Motor Accidents' Claim Tribunal has given a finding that the deceased lost their lives due to the accident caused by rash and negligent driving of the respondent No. 1. There is no challenge to the said finding. Therefore, I need not re-examine this aspect. The only question and issue raised in the present appeals is with regard to quantum of total compensation awarded to the appellants. In the case of Ms. Lalita and Ms. Munita, compensation of Rs.1,50,000/- has been awarded and in the case of Mr. Dinesh, compensation of Rs.2,00,000/- has been awarded.

3. In the case of Ms. Lalita and Ms. Munita, learned Tribunal noticed that both of them were studying but it was claimed that they were simultaneously stitching clothes and earning income.

Neither of them had obtained any diploma or special training for stitching clothes. Learned Tribunal however believed that the two daughters must be stitching clothes, but noticed that no evidence was produced to show any income being earned by them. It was also noticed that in normal course the two daughters would have got married and this was a relevant factor to be taken into consideration while calculating loss of dependency. In the case of Mr. Dinesh, the allegation made was that he was earning Rs.3,000/- per month by driving tractor and ploughing fields. He was educated upto class-XII. However, in his case also the learned Tribunal held that no conclusive and relevant evidence was led to show that Mr. Dinesh was earning and, therefore, compensation of Rs.2,00,000/- was awarded.

4. The appellant-claimants herein are mother and brother of the the deceased. The mother is a widow. She has lost her three children in one accident. Compensation is paid to the claimants on account of loss of dependency as well as non-pecuniary loss.

4. Loss of dependency is calculated on the basis of the pecuniary loss caused to the claimant due to the untimely death. Multiplier method is applied to calculate the said loss of

dependency. This method requires computation of annual pecuniary loss caused to the claimants on the basis of the annual income of the deceased. This is done by reducing from the annual income that the deceased would have earned, a proportion towards personal expenditure which the deceased would have incurred on himself. In the present case, the claimants are mother and brother of the three deceased who at the time of the accident were unmarried. But for the accident, three of them in the normal course would have got married and it can presumed that substantial part of their income/earnings would have been utilized by them on their spouses and children. This aspect has to be kept in mind while calculating the annual dependency of the appellant-claimants. Normally, where deceased was an unmarried person who was likely to get married and the claimants are parents, about 50% of the annual income that deceased would have earned in future is regarded as annual loss of dependency or multiplicand.

5. For the purpose of multiplier, the age of the deceased and the age of the claimants is taken into consideration. The multiplier is selected keeping in mind the term and the period during which the dependency of the claimants on the deceased is expected to last. It also depends upon the bank interest rates

and the annual return or yield. The multiplier given in Schedule II, with some modification and scaling down is applied to a petition u/s 166 of the Act. The object and purpose is to calculate a principal sum to give sufficient annual yield/return in a stable economy to the dependent claimants, equal to the annual loss of dependency during the entire term during which the dependency is expected to last. While calculating the capital lump sum figure, we have to keep in mind that the capital sum figure itself would be gradually reduced, utilised and paid as a part of the annual yield so as to be reduced to zero level at the end of the expected term of the dependency.

6. Keeping these aspects and principles, let us examine the evidence on record.

7. The claimants-appellants had only produced one witness namely appellant no.1, Smt. Rajesh who was examined as PW-1. She was 48 years old on the date of her statement on 22.3.2001. Her husband has died 14 years back and the accident had taken place on the night intervening 18th and 19th June, 1997. Her age can be, therefore, taken as 45 years on the date of the accident. The other claimant, Mr. Paramjit, as per the medical papers produced on record, (he was also

injured in the said accident), was 14 years old at the time of the accident. Smt. Ramesh in her statement had claimed that Ms. Lalita was 21 years old and was studying in B.A. (Final). Similarly, it was stated that Ms. Munita was 17 years old and studying in Class XII. It was further claimed that both of them were earning by doing stitching work etc. However, no evidence has been placed on record to show that Ms. Munita and Ms. Lalita were studying. It may be pointed out that in the case of the third deceased, Mr. Dinesh, provisional certificate issued by the Kerala School was placed on record. It has not been explained why no document or school records of Ms. Munita and Ms. Lalita were filed and proved, while in the case of Mr. Dinesh, school certificate was produced. Similarly, there is no evidence whatsoever to show that Ms. Munita and Ms. Lalita were doing stitching work and earning income. Admittedly they had not taken any training. No bills/receipt book or copy of bank account of the deceased was placed on record. With the evidence available, it cannot be presumed that Ms. Lalita and Ms. Munita were studying and also earning any income. Certified copy of the post mortem report in the case of Ms. Munita is on the record. In the said report, her age is described as 25 years old and not 17 years old as mentioned

by Ms. Ramesh. Post mortem report of Mr. Dinesh and Ms. Lalita has not been placed on record. In case of Mr. Dinesh, the date of birth as per the provisional school certificate Ex.PW1/1 is 16th July, 1979 and, therefore, on the date of the accident he had recently become an adult or 18 years old. It was claimed that Mr. Dinesh was the owner of a tractor and used to plough fields and was earning Rs.3,500/- per month. It is difficult to believe the said statement. The driving licence of Mr. Dinesh was not produced and the registration book and papers of the tractor allegedly owned by Mr. Dinesh were not filed. To have a driving licence under the Motor Vehicles Act, a person should be 18 years old. Mr. Dinesh as per school leaving certificate had just become 18 years of age at the time of the accident. No pass book or statement of bank account was filed to prove income that Mr. Dinesh was allegedly earning. Mr. Dinesh had got compartment as per the provisional certificate having secured 10 marks in Mathematics out of 100.

8. As per the IInd Schedule of the Motor Vehicles Act, income of non-earning persons is deemed to be Rs.15,000/- per annum. Similarly, in case of death of a spouse, 1/3rd is deduced from the annual income towards personal expenses. In this case the

claimants being mother and brother and the deceased being unmarried, 50% should be deducted from the annual income that the deceased were expected to earn. The dependency of the claimants on the deceased is therefore 50% of the annual income that the deceased would have earned in future. Keeping all these aspects in mind and treating the annual income of all the deceased as Rs.15,000/- per annum, I am inclined to deduct 1/2 from the aforesaid amount towards personal expenses in the case of Mr. Dinesh, Ms. Munita and Ms. Lalita. In view the age of the claimants, specially the mother, multiplier of 12 is applied, the total compensation or loss of dependency works out to Rs.90,000/- in the three cases. Even if we award non-pecuniary compensation of Rs.50,000/- in each of the three cases, the total compensation payable will be Rs.1,40,000/- each, which is less than the compensation awarded by the learned Tribunal of Rs.1,50,000/- each in the case of Ms. Lalita and Ms. Munita and Rs.2 lacs in the case of Mr. Dinesh.

9. While fixing non-pecuniary compensation at Rs.50,000/-, I have taken into account the fact that Smt. Ramesh, the mother had lost her husband 14 years back and in the accident she lost her two grown up daughters and one son. It goes without saying

that this must have been a traumatic experience and an emotional set back for a mother. In addition to the loss of dependency, the appellants are also entitled to non-pecuniary compensation for loss of company, love and affection. Human life cannot be simply measured in terms of loss of dependency or pecuniary loss. Loss of a brother, sister, son or daughter is always painful. It is easy to appreciate the difficult time and the emotional stress and strain which the widow mother has gone through as she has lost her three young children in an accident in one day. The said children were in the age group of 17-25 years. They would have been a pillar of support to her in her old age and provided her with emotional as well as physical helping hand.

10. While fixing the multiplicand, I have not taken into consideration future prospects of increase in "Income" of the deceased. This is so because no evidence has been led by the appellant-claimants to justify any such claim. (Ref. ***Bijay Kr. Dugar versus Bidya Dhar Dutta*** reported in (2006) 3 SCC 242). It may be mentioned here that with regard to Ms. Munita and Ms. Lalita there is no document or material to show that they were studying and/or to establish their educational qualification. Thus dependency (including future prospects) of

the mother and the brother in the case of Ms. Munita and Ms. Lalita has to be calculated keeping this aspect in mind. There is therefore no justification or reason to enhance annual income in these two cases on the ground of future prospects. However, even if multiplicand is increased from Rs.7,500/- to Rs.11,250/- in the case of Mr. Dinesh, the loss of dependency payable on applying multiplier of 12 will be Rs.1,35,000/-. To the above figure, if non-pecuniary compensation of Rs.50,000/- is added, the total compensation payable in the case of Mr. Dinesh will be Rs.1,85,000/- which is less than the compensation of Rs.2,00,000/- awarded by the Tribunal.

11. In view of the above, I do not find any merit in these appeals and the same are dismissed. No Costs.

(SANJIV KHANNA)
JUDGE

JULY 06, 2007.
VKR/P